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MEMORANDUM

To: Senate Committee on Campaign Finance Reform, Rural Issues and Information Technology

From: Thomas J. Basting, Sr., President-Elect
State Bar of Wisconsin

Date: May 1, 2007

Re: State Bar of Wisconsin Support for Senate Bill 171

The State Bar of Wisconsin strongly supports Senate Bill 171 and the provision of general purpose revenue to fund public financing of Supreme Court election campaigns.

The State Bar is chartered by the Wisconsin Supreme Court to, among other things, "provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence and law reform and the relations of the bar to the public..." With this vital mission in mind, I am writing to convey the State Bar's strong support for the principles embodied in SB 171.

We recognize the inherent benefit public campaign financing for Wisconsin judicial elections offers as a means to avoid even the perception that contributions to the election campaigns of judicial candidates could influence their decisions. This reflects the unique and critical role that the justice system plays in our system of government.

The State Bar's Board of Governors specifically addressed the issue of public financing for Supreme Court campaigns in 2006 and concluded that such a reform would "help maintain the integrity and independence of Wisconsin's courts, where even the perception of bias destroys public trust and confidence in the justice system."

SB 171 offers members of the Senate Committee on Campaign Finance Reform, Rural Issues and Information Technology an opportunity to build public trust and confidence in Wisconsin's justice system. On behalf of the State Bar of Wisconsin, I strongly urge members to use this opportunity to affirm the fundamental principle that Wisconsin's highest court is and will remain fair, neutral, impartial and nonpartisan by recommending passage of SB 171.

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Testimony of

Susan Armacost
Legislative Director
Wisconsin Right to Life

In opposition to
SB 77 and SB 171

Before the Senate Committee on
Campaign Finance Reform,
Rural Issues and Information Technology

May 1, 2007

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I am Susan Armacost, Legislative Director of Wisconsin Right to Life testifying in opposition to Senate Bill 77 and Senate Bill 171.

Senate Bill 77

Some lawmakers want to pass a law to protect themselves from having their voting records and stands on public policy issues discussed at election time in the public arena. Apparently, these public officials are offended when issue-oriented organizations, like Wisconsin Right to Life, or individuals, distribute objective information to the public about them regarding their voting records and stands on issues. They want to make it so burdensome on average citizens and citizen organizations to carry out these activities that many will no longer bother. This, of course, is precisely the result the supporters of SB 77 want.

Senate Bill 77 and countless other measures this session and in past sessions have been proposed that would diminish the ability of citizens organizations to freely engage in political discourse at election time by forbidding a non-PAC entity or individual from even mentioning the name of a public official, a political party or a political office on a billboard, in a newspaper ad, in a radio ad or in a television ad. These skiddish public officials so fear the prospects of anyone talking about them in any of those contexts at election time that they would subject ordinary citizens to fines and imprisonment unless they form a political action committee.

I think about our Wisconsin Right to Life chapters throughout the state. Many of them put newspapers ads in their local papers as a public service with the voting records of local State Senate and Assembly candidates on right to life

issues. Some of our chapters purchase air time on their local radio stations to inform the public in their area how their elected officials voted regarding right to life issues

Our chapter leaders are ordinary citizens. Public officials see them when they are back in their districts in the grocery store, in church, at kid's soccer games. Some of our chapters hold meetings around a kitchen table and publish their newsletters in their basements. But under SB 77, if these good people don't submit to the unwieldy and burdensome restrictions governing political action committees, the self-serving politicians who support SB 77 would impose stiff fines or imprisonment on them for simply talking about the voting records of public officials within 60 days of an election!

A law that allows only PACS to speak about politicians would silence ordinary citizens across the state that do not have the resources to meet the complex regulatory demands that are involved in operating a PAC.

Even citizen organizations that have connected PACS, such as Wisconsin Right to Life, would have their First Amendment rights chilled, which is precisely what the supporters of SB 77 want. Many people who belong to citizen organizations do not want their personal information to be a matter of public record. In a 2006 poll by the Institute for Justice, 60% of those polled said they would think twice about contributing to an issue campaign if their personal information will be disclosed and posted on a government website. Senate Bill 77 would require the public posting of the personal information of members of citizen organizations if that organization even mentioned the name of a candidate

within 60 days of an election in the formats covered in the legislation. The personal information of members of Wisconsin Right to Life is none of the government's business!

Self-serving public officials who don't want to be talked about at election time want to determine who will be allowed to speak, at what time and for how long. We don't need speech nannies to decide for us which messages we will or will not be able to receive. Our constitutional system of government ultimately rests on the general premise that the voting public, also known as grownups and American citizens, should be allowed to sort out competing political messages without government-imposed filters.

Senate Bill 77 goes well beyond McCain-Feingold in several respects. It mandates disclosure of contributor information once a $20 contribution threshhold has been reached. And at $100, SB 77 mandates the donor's employment information be made public. In McCain Feingold, contribution disclosure is not mandated until a threshold of $1000 has been reached.

Senate Bill 77 chills the First Amendment rights of citizens 60 days before any election. McCain Feingold chills the First Amendment rights of citizens 30 days before a primary election and 60 days before a general election.

The communication media activities in Senate Bill 77 reaches to television, radio, newspaper ads and billboards. McCain-Feingold does not include all of those mediums.

I'm sure you are aware these differences would have to be justified by the State of Wisconsin

Senate Bill 171

Wisconsin Right to Life strongly opposes SB 171, which mandates the tax funding of elections for State Supreme Court candidates. We oppose the use of tax dollars to fund the elections of any candidate for any office. What it amounts to is forcing taxpayers to foot the bill for the campaign expenses of candidates some citizens may oppose and not want elected.

Supporters of tax funded elections lament the fact the fact that there are an insufficient number of people who currently "check off" on their income tax forms to fund elections. They say additional sources of tax funding should be available so candidates can receive the maximum grant to which they are "entitled" and the influence of "interest groups" will be lessened.

If the people of Wisconsin are not responding to the check off, isn't that an indication that they don't want to pay for the election expenses of politicians? In July of 2006, the Wisconsin Policy Research Institute and Diversified Research released a poll showing that Wisconsin residents oppose using Taxpayer dollars to fund Wisconsin campaigns by the hefty margin of 65% to 26%.

No one should be surprised that Wisconsin citizens want to decide for themselves if they want to contribute to a politician's campaign and to whom they will contribute. They most certainly do not want to pay for the bumper stickers and yard signs of candidates they oppose! Senate Bill 171 is nothing more than an entitlement scheme for politicians. Wisconsin Right to Life urges you to oppose it.

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May 1, 2007

To: Senate Committee on Campaign Finance Reform, Rural Issues and Information Technology
Re: Senate Bill 77 and Senate Bill 171

Our democracy requires that all voices be heard. Access to money should not determine whose voice is stronger, especially and foremost in campaigns for elected officials. We believe SB 77 and SB 171 provide needed reforms by regulating all of the players involved (candidate campaigns and independent spenders) and providing for public financing of Wisconsin Supreme Court elections. In the long run, we believe it is important to have substantial public financing for all offices, but for now the Supreme Court races are a good place to start. People need to have confidence that those holding the highest office in our justice system are free from outside special interest influence.

It is clear that "issue ads" influence elections, and we have no doubt that their sponsors are purposeful and intentional in their expenditures on these communications. Because the ads are costly, they are more accessible to moneyed interests. These messages should not be silenced, but they should be subject to the regulations imposed on other campaign-related communications, as provided by SB 77.

Senate Bill 77 imposes registration and reporting requirements on any individual or organization that, within 60 days of an election, makes any communication using the media which includes a reference to a candidate, a state office to be filled, or a political party. The bill requires reporting of any spending related to the communication, and this counts toward contribution and spending limits. The bill exempts communications made by corporations, cooperatives, or nonpolitical voluntary associations to their own constituents.

Senate Bill 171 provides public financing of Wisconsin Supreme Court elections. Under the bill, a candidate may qualify for public financing by receiving qualifying small contributions as evidence of public support. The bill bans private contributions and personal funding of a campaign once a candidate has accepted a public grant.

We are happy to see that SB 171 provides for adequate public financing of campaigns, which can be counted on by candidates, not only by increasing the individual Wisconsin income tax check-off for the election campaign fund to $3 but also by providing for additional general purpose revenues to cover any shortfall.

We believe there should be adequate public financing for eligible candidates to run their campaigns, and we appreciate the fact that SB 171 includes a biennial cost of living adjustment. It is good that this bill reduces the cumulative campaign contribution limits to $1,000 for either an individual or a committee. In addition, the bill has provisions to protect a publicly funded candidate whose opponent makes excessive expenditures, or who is targeted by excessive independent expenditures. Together these measures will discourage the kind of spending spiral we have seen in recent Supreme Court elections and even the playing field for candidates.

One concern we have with SB 171 is that it does not deal with issue ads. Without regulation of issue ads, campaign spending and contributions will simply be shifted to this medium, rather than reduced. Therefore, we urge you to support both SB 77 and SB 171 together. Thank you.

wisconsin DEMOCRACY campaign

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Testimony on Senate Bills 77, 170, 171 before the Senate Committee on Campaign Finance Reform, Rural Issues and Information Technology

Tuesday, May 1, 2007

Thank you for holding this hearing today. We appreciated the opportunity provided to our Executive Director, Mike McCabe, to give detailed testimony on the need for campaign finance reform at the April 10 committee hearing. Today, I will simply highlight that testimony and our support for each of the three bills before the committee today. Please refer to the April 10th testimony for additional arguments, as well as the Brennan Center for Justice Report we distributed to the committee that provides an excellent assessment of Wisconsin's campaign finance laws and makes a strong case for reforms that make our system useful and attractive to candidates and the public alike.

This past election for Justice of Supreme Court was by far the ugliest, most partisan and expensive Supreme Court race our state has ever seen. After final campaign reports are filed in July, spending on the Supreme Court race will top $6 million, coming on the heels of a $32 million race for governor and more than $8 million attorney general's election campaign. Most of these expenditures were on negative ads that said nothing of the candidate's ability to meet the responsibilities and duties of our highest court.

More than half of the spending was done by a handful of interest groups. The candidates themselves broke the spending record by a wide margin for Supreme Court candidates, yet were outspent by a long shot by special interest groups. Of the amount we have been able to account for so far, with two weeks of candidate fundraising and several late interest group ad buys yet to be counted, a single interest group is responsible for more than 40% of all spending in the race.

We must first start reform with truth in campaigning. **Senate Bill 77** addresses the need for full disclosure of all election related activities. It honors the public's right to know who is trying to influence the outcome of elections, who is bankrolling campaigns, how much is being spent, and where the money comes from. In the $6 million Supreme Court race, the origins of as much as $2 out of every $3 used to influence the outcome of this election were concealed from public view.

To suggest that this campaign reform limits free speech or is even unconstitutional is undemocratic. Campaign finance reform is critical to free speech because political speech has become anything but free. The cherished First Amendment right to free speech is being turned into a privilege -- a commodity that is bought and sold. The skyrocketing cost of campaigns

prices people of modest means out of the democratic process. We need a level playing field that allows everyone to participate in our democracy. Such notions that money is speech and secrecy is freedom counter the fundamental precepts of our democracy.

Because voters are losing faith that justice is really blind, it is imperative that we maintain and safeguard impartial justice. We appreciate the lead taken by Senator Kreitlow and members of the freshman class in the Assembly by introducing **Senate Bill 171** calling for public financing of state Supreme Court races. Impartial Justice has already been instituted in North Carolina and is working extremely well. New Mexico also recently enacted similar reform. Statewide campaigns for judicial offices are now being conducted in North Carolina for no more than a few hundred thousand dollars and judges are expressing relief that they no longer have to seek special interest dollars and are no longer perceived to be under the influence of campaign supporters when they rule on cases.

Further, as acknowledged with Senate Bill 77, transparency and citizens' right to know are paramount to a functioning democracy. **Senate Bill 170**, the **Judicial Right-to-Know Act**, is one additional step to ensure impartial justice and rebuild public trust in our courts. By requiring judges follow the rules relating to conflicts of interest, the bill empowers citizens as parties to a civil suit with information that ensures impartial consideration in their court case.

What has happened in the aftermath of the recent Supreme Court election – namely the complaint filed against Judge Annette Ziegler by the Ethics Board and the investigation launched by the Judicial Commission in response to a complaint we filed – speaks powerfully to the need for the Judicial Right-to-Know bill. Conflicts of interest cut to the heart of judicial integrity because of their capacity to seriously undermine public confidence in the fairness and impartiality of judges and our courts.

We look forward to working with the committee on future discussions relating to comprehensive reform for Wisconsin that would restore voter-owned elections for <u>all</u> state offices. With donor-owned elections you get a public that believes their own elected representatives are more beholden to their cash constituents than their own voting constituents. The Democracy Campaign supports both Senate Bill 12 – the Ellis/Erpenbach bill – and the Pocan/Risser Clean Elections bill modeled after the highly successful systems already up and running in Arizona and Maine and recently adopted in Connecticut.

These three proposals before the committee today each work to rebuild public trust and confidence in our government by supporting transparency and empowering citizens so imperative to a healthy democracy. Please support Senate Bills 77, 170, and 171.